



LEGAL PERSONALITY OF BRICS AND IMPLICATION TOWARD INDONESIA'S FOREIGN TRADE POLICY AFTER JOINING AS NEW MEMBER

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ABSTRACT

This article is the authors' response to Indonesia's joining the BRICS alliance. BRICS is an acronym for its founding countries: the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China, and the Republic of South Africa. The main objectives of BRICS are to increase economic growth, enhance cooperation among its members, and reform the international financial and political systems representing the interests of developing countries. This article investigates the impact of Indonesia's participation in BRICS, particularly on Indonesia's foreign trade policy, by asking two questions. First, what is the legal personality of BRICS regarding international trade relations? Second, can BRICS help Indonesia achieve its international trade policy? It is unclear which specific role BRICS will play concerning international trade relations among its members and how they will cooperate with others if there is no definitive legal commitment among themselves. This article finds that BRICS has no international legal personality as a legal entity and is not an international organization as well as a trading bloc as regulated in Article XXIV of GATT, Enabling Clause, Article V GATS, and General System of Preferences; it is just merely a political Global South networking alliance. It is challenging for BRICS member countries to achieve their objectives if no commitment is made in the form of hard law instruments such as international agreements regulating trade relations. It is time for Indonesia to rethink how to maximize its potential in international Trade by utilizing its participation in PTA with its trading partner.

Keywords: BRICS; Indonesia; foreign trade policy.

I. INTRODUCTION

In this introduction, the authors briefly present how economic globalization has reshaped international trade relations. Then, the authors try to relate this phenomenon to Indonesia's participation in the BRICS forum, which is the issue raised and analyzed in this article.

With the expansion of globalization, the integration of national economies through international trade and capital flows has significantly contributed to global economic growth. Peter Van Den Bossche, an expert in international trade law, defines economic globalization as a process marked by the increasing exchange of goods, services, and foreign direct investment across borders. Economists and policymakers generally concur that economic globalization, facilitated by international trade and investment, ultimately enhances the economic well-being of individual nations.¹ Economic globalization is a multifaceted phenomenon. Politicians, private sectors, trade associations, environmentalists, leaders, third-world NGO activists, economists, and lawyers have been discussing its pros and cons. From an economic perspective, globalization is the complete integration of national

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¹ Peter Van den Bossche, *The Law and Policy of the World Trade Organization: Text, Cases and Materials*, Cambridge University Press, 2008.

economies into a borderless global economy. This includes free international Trade and unlimited foreign direct investment.²

Moreover, the global international system is undergoing significant transformations. Globalization has long been associated with modernization and a hegemonic liberal international order shaped by Western perspectives. However, shifts in global power dynamics, particularly following the 2008 financial crisis, have led to radical changes in the international order. The dominance of the United States, rooted in the Westphalian system and the post-World War II era, established an international framework that has been largely Western-centric and liberal in nature.

Today, this order is being challenged. The rise of China, with its growing economic and geopolitical influence, poses a potential challenge to the liberal international system. China's ascent signals the possibility of an alternative global order—one that may diverge from traditional Western liberal principles. As a result, the evolving global landscape is marked by increasing competition between differing ideological and economic models, reshaping the foundations of international governance and cooperation.³ Some scholars argue that the liberal world order is facing a crisis, paving the way for the emergence of a new global framework, exemplified by BRICS. This alliance has the potential to serve as the foundation for a shifting international order—one that is polycentric, where multiple regional powers and diverse governance models play a central role in shaping global affairs. Unlike the traditional Western-dominated system, this emerging order may emphasize regionalism, economic cooperation, and multipolar governance, reflecting the interests and priorities of developing nations.⁴

Globalization has caused many countries to become more interdependent, especially in economic relations, which has resulted in international trade relations becoming increasingly complex in recent decades. Due to this interdependence, many countries prefer to cooperate by making trading blocs than do it unilaterally. Economic integration also plays a pivotal role because it can serve as a means to achieve each country's foreign trade policy objectives. Most countries joining in economic integration want to dismantle trade barriers, foster investment, and facilitate the free flow of goods, services, and capital; they seek alliances to ensure a prosperous future for their people.⁵

In theory, economic integration is based on 2 main factors, namely:

1) Interdependence

With the increasing openness of trade relations, countries' interdependence level increases. Therefore, countries feel cooperating is better than doing it unilaterally.

2) Efficiency

Economic integration is important because it can promote an efficient trade sector in a country.⁶

International trade relations continue to experience significant developments over time. Until now, trade relations between states can be carried out through bilateral, regional, plurilateral, and multilateral cooperation. Each form of cooperation has the same goal: to realize trade liberalization.

² An An Chandrawulan, *Hukum Perusahaan Multinasional: Liberalisasi Hukum Perdagangan Internasional dan Hukum Penanaman Modal*, Alumni, Bandung, 2022.

³ Jyrki Kähkönen, *Global Change: BRICS and the Pluralist World Order*, Third World Thematics: A TWQ Journal, 4.6, 2019, p. 415–23.

⁴ Maria L Lagutina, *BRICS in a World of Regions*, Third World Thematics: A TWQ Journal, 4.6, 2019, p. 442–58.

⁵ Sanela Porca-Konjikusic, Paul L. Hudson Jr., and Lodha Jain Harshi, *Global Economic Integration: How Do ASEAN and BRICS Organizations Contribute to the Process?*, BRICS Journal of Economics, 5.2, 2024, p. 155–68.

⁶ World Trade Report 2011, *The WTO and Preferential Trade Agreement: From Co-Existence to Coherence*, can be accessed at: https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report11_e.pdf

Initially, economic integration, especially in the trade sector, was only motivated by geographical proximity. Examples of this model of integration are the integration carried out by European countries by forming the European Community (EC), the European Free Trade Area (EFTA), the integration of North American countries that formed NAFTA (North America Free Trade Agreement) which has now changed its acronym to USMCA, the integration of ASEAN member countries that formed the AEC (ASEAN Economic Community), the integration between Argentina, Brazil, Paraguay and Uruguay that are members of MERCUSOR (Common Market of the South, Common Market of the Caribbean) to the integration efforts carried out by African countries that are members of COMESA (Common Market of Eastern and Southern Africa), etc. Then, this approach began to shift, where regional proximity was not the only factor behind it. Now, countries are starting to form preference models on a regional cross-border scale, or Preferential Trade Agreements (PTAs).

There are several reasons why states join trading blocks. States have different objectives; Some want to gain market access and even seek foreign political support. The European Union and the United States' experiences can prove the above statement. Historically, the reason why the European Union joined various trading blocs was dominated by political factors. However, in its development, these factors could not be maintained along with changes in the interests of the European Union, which wanted to expand Trade through market access outside the European Union. This can be seen from the EU's trade strategy, which uses the concept of "Global Europe," a foreign trade policy through the formation of selective bilateral cooperation based on (1) The market potential of trading partner countries, (2) The level of protection for exporters from the EU, (3) The principle of selectivity so as not to cause negative impacts on previously formed cooperation.

Like the European Union, the United States has the same approach to trade cooperation with other states, especially informing trading blocks. Based on the General Accounting Office (GAO) report in 2004, there are several criteria for countries that are a priority for the United States to join the trading block, namely, its readiness, economic/commercial benefit, benefit to the broader trade liberalization strategy, compatibility with US Interest, congressional/private sector support, and US government resource constrain.

To find out the motives for the formation of other trading blocks, Siegfried Schultz, in his article entitled "Regionalization of World Trade Dead End or Way Out," stated that there are several factors that are the motives for why countries involve themselves in PTAs, namely:

- a) Implicitly, there is an assumption that the economic welfare of a country will increase if liberalization is carried out through trading blocs such as PTAs compared to liberalization according to multilateral forums like the WTO version.
- b) Trading blocs can also increase productivity through competition and investment among member countries.
- c) Based on Jacob Viner's theory (Trade Creating vs. Trade Diverting), the formation of trading blocs tends to impact the creation of more intense trade relations positively.
- d) The formation of trading blocs is not only motivated by economic factors but also political factors.

The formation of BRICS may be perceived as a challenge to the liberal international order; however, it does not oppose free trade or globalization. Rather, BRICS seeks to redefine the global economic landscape by advocating for a system that is less centered on Western values and more inclusive of diverse civilizational perspectives. The bloc aims to reshape the conditions of developing

countries by promoting a multipolar world order that better reflects their interests, priorities, and economic models, ensuring a more balanced and equitable global governance framework.⁷

The author contends that, in the context of international trade, BRICS represents a response to globalization, which has often been perceived as detrimental to the national interests of the Global South. The bloc's formation is rooted in the desire to create a more equitable global economic order that better serves the interests of developing nations. This motivation is explicitly reflected in key BRICS declarations, including the *Kazan Declaration*, titled "*Strengthening Multilateralism for Just Global Development and Security*," and the *BRICS Declaration on the WTO*, titled "*Strengthening Multilateralism for Just Global Development*." These documents underscore BRICS' commitment to reinforcing multilateralism as a means of achieving fair and inclusive global economic governance.

Since its first declaration in Yekaterinburg – Russia (2009), BRICS (at that time known as BRIC) has recognized the importance of international trade and foreign direct investments to promote the world economic recovery and called upon all parties (BRIC Members) to improve the international trade and investment environment. Additionally, BRIC has advocated for curbing trade protectionism and achieving comprehensive and balanced outcomes in the WTO's Doha Development Agenda.⁸ These motives are continuously reiterated and strengthened through each BRICS Summit, the latest can be seen in the *Kazan Declaration* issued at the XVI BRIC Summit 2024 titled "Strengthening Multilateralism for Just Global Development and Security"⁹ and the *BRICS Declaration on the WTO* titled "Strengthening Multilateralism for Just Global Development".

The *Kazan Declaration* outlines that BRICS cooperation is structured around three main pillars: **political and security, economic and financial, and cultural and people-to-people cooperation**. Regarding **international trade**, BRICS members reached agreements on several key issues, including:

- 1) By establishing the BRICS Informal Consultative Framework on WTO issues, BRICS explicitly supports the existing WTO Multilateral trading system for its rules-based, open, transparent, fair, predictable, inclusive, equitable, non-discriminatory, and consensus-based.
- 2) BRICS supports the special and differential treatment (S&DT) principle for developing countries, including Least Developed Countries, and rejects unilateral trade restrictive measures.
- 3) BRICS opposes unlawful unilateral coercive measures in international Trade.
- 4) BRICS urges developed nations to fulfill their commitments to financing development and to enhance their cooperation with developing countries in international trade. This includes providing financial support, technical assistance, and capacity-building initiatives to help developing economies integrate more effectively into the global trading system.¹⁰

Regarding international trade, BRICS adopted *The Strategy for BRICS Economic Partnership 2025* during the XII BRICS Summit in Moscow in 2020. This strategic document underscored the vital role of international trade in driving job creation, sustained economic recovery, and balanced growth and development. It reaffirmed BRICS' commitment to a rules-based, transparent, non-discriminatory, open, and inclusive multilateral trading system, emphasizing the centrality of the WTO in global trade regulation. By advocating for stronger multilateral cooperation, the strategy aimed to enhance trade integration among BRICS members while opposing protectionist measures and unjust trade restrictions.

⁷ Jyrki Käkönen, *Op. Cit.*

⁸ Joint Statement of the BRIC Countries' Leaders - Yekaterinburg 2009.

⁹ XVI BRICS Summit Kazan Declaration STRENGTHENING MULTILATERALISM FOR JUST GLOBAL DEVELOPMENT AND SECURITY Kazan, Russian Federation 23 October 2024.

¹⁰ Siefried Schultz, *Regionalisation of World Trade Dead End or Way Out*, dalam Meine Pieter van Dijk and Sandro Sideri, *Multilateralism versus Regionalism: Trade Issues after the Uruguay Round*, Frank Cass & Co. LTD, London, 2005, p. 25.

In this strategy document, BRICS countries urged all nations to oppose trade protectionism in all its forms, including disguised trade restrictions, and expressed their continued support for the work of the WTO and other international organizations. Furthermore, BRICS members committed to enhancing cooperation to create favorable conditions for expanding and diversifying their participation in global trade. The strategy also underscored the importance of coordination within the WTO in developing the Post-Bali work program and reaffirmed strong backing for the successful conclusion of the Doha Round negotiations.

Prior to the *Kazan Declaration*, in July 2024, BRICS issued the *BRICS Declaration on the WTO* as an effort to address deficiencies within the WTO system, particularly in sectoral areas such as agriculture, trade in services, and subsidies. Additionally, BRICS members reaffirmed their commitment to enhancing international trade and investment by promoting improved investment flows.

The declaration also underscored the importance of strengthening WTO flexibilities to support industrialization programs in developing countries and countering restrictive trade practices, including anti-competitive policies. Furthermore, BRICS members expressed concerns regarding the intersection of international trade and environmental policies, opposing unilateral measures and the use of "green" protectionism as a trade barrier..

Based on the *Kazan Declaration* and the *BRICS Declaration on the WTO*, it can be concluded that the establishment of BRICS aligns with the WTO multilateral trading system rather than posing a threat to it. The *Kazan Declaration* explicitly reaffirmed that BRICS member states remain committed to their obligations under the WTO, indicating that the bloc's formation is intended to complement, rather than undermine, the existing global trade framework.

Despite ongoing ambiguity regarding its legal status, BRICS continues to expand in membership. Initially founded as BRIC with four member states Brazil, Russia, India, and China South Africa officially joined in 2010, transforming the group into BRICS. By 2025, the number of BRICS member states has grown to eleven, reflecting its increasing geopolitical and economic significance.

Against this backdrop, the author argues that the motive for forming BRICS is almost the same as for forming trading blocs such as Preferential Trade Agreements (PTAs). However, it is still questionable regarding the legal status of BRICS in this case; this article raises 2 (two) research questions. First, what is the legal personality of BRICS regarding international trade relations? Is BRICS an international organization or a regional trading block as regulated in Article XXIV of GATT? Second, regarding Indonesia's participation as a member of BRICS, what are its implications for foreign trade policy?

This article consists of 3 (three) parts. In the first part, the authors will discuss the legal personality of BRICS. In the second part, the authors analyze the implications of Indonesia's membership in BRICS toward its foreign trade policy and close with Conclusions and recommendations.

II. RESEARCH METHOD

This article uses descriptive behavioral economics and legal research to consider the possible implications of the empirical findings and theoretical insight of behavioral economics for legal issues. The findings are based on assumptions typical in traditional economic models, namely the assumption of full rationality, total self-control, and exclusive self-interest.¹¹ The authors try to relate the implications of Indonesia's participation in BRICS to its foreign trade policy.

III. DISCUSSION

From BRIC to BRICS

Understanding the BRICS phenomenon from a legal perspective is essential, as the legal foundations and implications of this evolving and ambiguous framework cannot be disregarded. A thorough legal analysis is necessary to assess BRICS' institutional structure, decision-making mechanisms, and its potential alignment with international legal principles.¹² Undoubtedly, BRICS serves as a legal framework that represents an innovative frontier for economists, political scientists, and legal scholars. However, from a juridical perspective, precisely defining BRICS remains a challenge. Attempts to classify it within existing legal categories may be inadequate and risk leading to oversimplified or misleading conclusions. Given its evolving nature and unique structure, a nuanced legal analysis is necessary to accurately assess its role within the international legal and economic order.¹³

Goldman Sachs first introduced the BRIC acronym, emphasizing that it is not a natural, historical, cultural, political, or linguistic construct but rather an economic concept. Jim O'Neill, former Chief Economist and Chairman of Goldman Sachs Asset Management, later asserted that the primary purpose of the BRIC classification was to capture investors' attention by highlighting these nations as emerging economic opportunities within the global market. In his analysis, O'Neill drew multiple comparisons between the economies of Brazil, Russia, India, and China and those of the Group of Seven (G7), underscoring their potential to reshape the global economic landscape.¹⁴

As an economist, O'Neill primarily focused on economic indicators such as GDP growth rates and population sizes when categorizing the BRIC countries, without deeply considering political aspects. He projected that, over the following decade, the BRIC economies—particularly China—would experience significant growth in their share of global GDP. This prediction raised critical questions about the broader economic impact of fiscal and monetary policies within these nations. While O'Neill did not anticipate BRIC evolving into a political entity, his coined term inadvertently became associated with political developments as well.¹⁵

The effort to strengthen economic cooperation among developing nations, commonly referred to as the Global South, through the BRICS forum has been evolving since the early 2000s. The initiative began with an informal meeting in 2005, attended by the deputy foreign ministers of the four founding

¹¹Julie De Coninck, "Behavioral Economic and Legal Research," *Methodologies of Legal Research Which Kind of Method for What Kind of Discipline*, edited by Mark Van Hoecke, United Kingdom, Hart Publishing, 2011. p.257-275

¹²Lucia Scaffardi, *BRICS, a Multi-Centre Legal Network?*, Beijing L. Rev., 5, 2014, p. 140.

¹³Giulia Formici, *The Role of the BRICS Group in the International Arena: A Legal Network under Construction*, Third World Thematics: A TWQ Journal, 4.6, 2019, p. 459–74.

¹⁴Vera Thorstensen, Daniel Ramos, Carolina Muller & Thiago Noguera, "Brazil, Russia, India, China and South Africa (BRICS) as Players in the World Trade Organization," *BRICS in the World Trade Organization: Comparative Trade Policies Brazil, Russia, India, China, and South Africa*, edited by Vera Thorstensen & Ivan Tiago Machado Oliveira, Institute for Applied Economic Research, Brasilia, 2014, p. 13.

¹⁵Oliver Stuenkel, *The BRICS and the Future of Global Order*, Rowman & Littlefield, 2020.

countries. A year later, in 2006, the foreign ministers of BRIC nations met on the sidelines of the United Nations General Assembly (UNGA). Since 2009, BRIC has consistently held summits at the head-of-state level. In 2011, South Africa officially became a member, leading to the expansion of the acronym from BRIC to BRICS.

As of January 2025, the number of BRICS member states continues to expand. With Indonesia's official accession in early 2025, it became the first ASEAN country to join the bloc. Currently, BRICS comprises 11 member states: Brazil, Russia, India, China, South Africa, Saudi Arabia, Egypt, the United Arab Emirates, Ethiopia, Iran, and Indonesia. The prospect of further expansion remains significant, with several Southeast Asian countries, such as Malaysia, Vietnam, and Thailand, showing interest in joining BRICS. This potential enlargement could enhance the bloc's influence in global economic and political affairs while strengthening cooperation among developing nations.

Analyzing the evolution of emerging economies in recent years and their growing significance in the global economy, Irina Gabriela Radulescu asserts that the primary drivers of BRICS' economic expansion have been increased factor inputs, large population scales, and abundant natural resources. Brazil and Russia primarily leverage their vast mineral reserves, while China benefits from a combination of inexpensive labor and low-cost resources. India, on the other hand, capitalizes on its low-cost workforce. The BRICS nations share key characteristics: they are developing economies with substantial global economic influence, possess high growth potential, and hold systemic importance in shaping global economic governance.¹⁶

Legal Personality of BRICS

To address the first issue, this study will analyze the legal status of BRICS through the lens of international law theories and Article XXIV of the General Agreement on Tariffs and Trade (GATT). This inquiry is crucial, as it will determine whether BRICS possesses legal personality, which is essential for assessing its capacity to enter into binding agreements, exercise rights, and assume obligations under international law.

The authors assess that, as of the time of writing, BRICS does not constitute an international organization but rather functions as a Global South networking alliance or an advanced form of institutional international cooperation, akin to the Group of Eight (G8), the Group of Seventy-Seven (G77), and the Arctic Council. Another scholarly perspective categorizes BRICS as an informal union of states. BRICS faces several challenges in establishing itself as a dominant center of power in the contemporary global order, including its ambiguous legal status and internal competition among its member states, which undermines policy coherence and strategic unity.¹⁷

To make a comparison, the author argues that BRICS does not yet have a legal personality, just like the beginning of the formation of ASEAN before the organization changed its status to an international organization with the ASEAN Charter in 2008. From 1967 to 2008, the interaction of ASEAN countries was based on the Bangkok Declaration, which was essentially a political statement that did not bind the rights and obligations of member countries. Another similarity between ASEAN during 1967-2008 and BRICS is that neither had headquarters during the establishment. In general, BRICS does not have a permanent institutional structure as an international organization. Only the

¹⁶Irina Gabriela Radulescu, Mirela Panait, and Catalin Voica, *BRICS Countries Challenge to the World Economy New Trends*, *Procedia Economics and Finance*, 8, 2014, p. 605–13.

¹⁷Maria L. Lagutina, *Op.Cit.*, p.12.

National Development Bank was established based on an international agreement and is headquartered in Shanghai.¹⁸

Legal personality is a prerequisite for an international organization to be able to carry out its functions, such as making contracts, making agreements with other countries, or filing claims with other legal entities.¹⁹ According to Antonio Cassese, an international organization with legal personality possesses several key legal rights and authorities:

- a) It can enter into international agreements with non-member states on matters within its jurisdiction, with such treaties holding the same legally binding status as international treaties.
- b) It enjoys immunity from the jurisdiction of state courts for acts and activities performed in its official capacity.
- c) Its agents are granted protection while acting in an official capacity within the territory of a third state.
- d) It has the right to bring international claims to seek reparation for damages caused to the organization's assets or its officials by member or third states.²⁰

By having legal personal attributes, an international organization can carry out its functions legally. In Addition, legal entities also obtain privileges and immunities for officials and representatives of the organization as regulated in the Convention on the Privileges and Immunities of Special Agencies. An example of an organization in the field of international Trade that has a legal personality is the WTO. Article VII of the Marrakesh Arrangement Establishing of the World Trade Organization is the legal basis for the legal personality of the WTO.

Article VIII establishes the legal status of the World Trade Organization (WTO). It grants the WTO legal personality, ensuring it has the necessary capacity to perform its functions. WTO members are required to provide the organization with the privileges and immunities needed for its operations. Similarly, officials of the WTO and representatives of member states must be granted the necessary privileges and immunities to carry out their duties independently. These protections must align with those outlined in the 1947 UN Convention on the Privileges and Immunities of Specialized Agencies.²¹

Is BRICS a Preferential Trade Agreement (PTA) established based on Article XXIV GATT, Article V GATS, *Enabling Clause*, and General System of Preferences? The answer is negative with some caveats. Economic integration through preferential trade agreements (PTAs), such as regional trade agreements (RTAs), free trade agreements (FTAs), and comprehensive economic partnership agreements (CEPAs), is a growing trend. As WTO negotiations tackle complex and sensitive issues such as trade and the environment, intellectual property rights, trade and investment, and competition policy, reaching a multilateral consensus becomes increasingly difficult. This challenge is further compounded by the fact that most WTO members are developing countries, each with diverse economic priorities and developmental needs.²²

Article XXIV of the GATT 1994 serves as the foundational framework for preferential trade arrangements (PTAs) within the World Trade Organization (WTO). Its primary objective is to enable the formation of PTAs among member states while preventing such agreements from creating new barriers to trade for non-member countries. By fostering deeper economic integration among

¹⁸NDB was established based on the Agreement on the New Development Bank, which was signed on July 15, 2014, in Fortaleza, Brazil, and Its Headquarters Agreement, which was signed on February 27, 2016, in Shanghai.

¹⁹ Sumaryo Suryokusumo, *Hukum Organisasi Internasional*, Jakarta: Universitas Indonesia, 1990, p.110.

²⁰ Antonio Cassese, *International Law*, Second Edition, United Kingdom: Oxford University Press, 2005, p.138-139.

²¹ The Marrakesh Arrangement Establishing of the World Trade Organization.

²²Mitsuo Matsushita, *Legal Aspects of Free Trade Agreements: In The Context Of Article XXIV of the GATT 1994, WTO and East Asia: New Perspectives*, Cameron May Ltd, London, 2004.

participating nations, Article XXIV aims to enhance trade liberalization and economic cooperation. Although it does not explicitly define all forms of regional trade agreements (RTAs) that existed at the time or those that may emerge in the future, Article XXIV:5 identifies three main types of PTAs: Customs Unions, Free Trade Areas, and Interim Agreements.

To be considered an RTA under Article XXIV, an agreement must meet several criteria:²³

1. Coverage of "substantially all trade": The agreement seeks to remove tariffs and other restrictive trade regulations on "substantially all trade" between member territories. However, the lack of a precise definition for "substantially all trade" has led to differing interpretations. For example, during Economic Partnership Agreement (EPA) negotiations with ACP countries, the European Union (EU) has defined it as requiring 80 percent of trade in goods to be duty-free. This ambiguity creates room for alternative trade agreements or cooperative frameworks that may not strictly adhere to this criterion but still facilitate economic integration.
2. No increase in trade barriers against non-members: The duties and other trade regulations applied to non-member countries must not be more restrictive than those that were in place before the establishment of the Regional Trade Agreement (RTA). This ensures that RTAs do not create additional barriers for external trade partners while promoting deeper economic integration among member states. .
3. Timeframe for implementation: The agreement should provide for the establishment of the customs union or free-trade area within a reasonable length of time.
4. Notification to the WTO: The agreement must be officially notified to the WTO. While the WTO Committee on Regional Trade Agreements (CRTA) reviews RTAs and provides a platform for discussions, it lacks the authority to enforce compliance. Ultimately, the responsibility for ensuring adherence to Article XXIV rests with WTO member states.

In addition to these criteria, the *Enabling Clause* under the WTO framework warrants consideration, as it permits developing countries to establish preferential trade agreements (PTAs) without adhering to the "substantially all trade" requirement outlined in Article XXIV of the General Agreement on Tariffs and Trade (GATT). This provision grants flexibility to developing nations in advancing regional economic integration. Given that all BRICS member states are classified as developing countries, the *Enabling Clause* could potentially serve as a legal basis for BRICS to pursue preferential trade arrangements without necessitating full compliance with WTO rules governing Regional Trade Agreements (RTAs)..

An analysis of the motives and official documents underlying the formation of BRICS reveals an absence of key elements required for a Preferential Trade Agreement (PTA), specifically the "coverage of substantially all trade" and a "timeframe for implementation." No legal instruments issued by BRICS explicitly fulfill these criteria. Moreover, there is no indication within its legal framework that member states intend to establish BRICS as a PTA under the WTO Multilateral Trading System.

However, given BRICS' significant share of global trade volume and value, along with institutional mechanisms that facilitate trade and investment among its members, it may be argued that BRICS functions in a manner akin to or as a precursor to a Regional Trade Agreement (RTA). Further legal and economic analysis is required to assess this potential.

²³Nicolas Lockhart and Andrew D Mitchell, *Regional Trade Agreements under GATT 1994: An Exception and Its Limits*, Nicolas Lockhart, Andrew D. Mitchell, *CHALLENGES AND PROSPECTS FOR THE WTO*, 2005, p. 217.

BRICS and Indonesia Foreign Trade Priority

Before we explore the implications of BRICS for Indonesia's foreign trade policy, the authors will briefly outline the priority the Indonesian government wants to pursue through its foreign trade policy. Indonesia upholds the concept of economic democracy, founded on the principles of inclusivity, equitable efficiency, sustainability, environmental consciousness, and self-reliance. It strives to maintain a balance between economic progress and national unity. By fostering trade activities, economic democracy serves as a key driver of national economic development, contributing to income distribution and overall economic stability.

Foreign Trade includes Export and/or Import activities of Goods and/or Trade in Services beyond the country's borders. The objectives of Indonesia's foreign trade policy are regulated in Article 3 of the Trade Law, which include increasing the competitiveness of Indonesian Export products, increasing and expanding market access abroad, and increasing the capabilities of Exporters and Importers to become reliable Business Actors.

Indonesia's foreign trade policy is an extension of its broader foreign relations framework, which is based on the principles of equality, mutual respect, and non-interference in domestic affairs. Whether engaging in regional or international forums, through bilateral or multilateral cooperation, Indonesia's approach remains firmly anchored in national interests and guided by its Free and Active Foreign Policy (*Politik Luar Negeri Bebas dan Aktif*). This policy is carried out through a diplomatic strategy that is innovative, proactive, and forward-thinking-moving beyond conventional and reactive measures-while upholding firm principles, clear strategic positioning, and a balance between pragmatism and adaptability.²⁴

Why did Indonesia join BRICS?

Before the establishment of BRICS, Indonesia played a pivotal role in fostering South-South cooperation through the 1955 Bandung Conference. Attended by 29 Asian and African nations, the conference aimed to promote economic collaboration and solidarity among developing countries. The *Bandung Spirit* embodied principles of non-interference and non-alignment, reinforcing unity among emerging nations while addressing global inequalities. South-South cooperation is founded on the belief that development can be driven by those experiencing poverty through mutual assistance and shared progress. In this context, BRICS serves as a potential vehicle to further advance this vision.²⁵

Indonesia, as a non-aligned nation, upholds its *Free and Active Foreign Policy (Politik Luar Negeri Bebas dan Aktif)*, a principle reflected in its decision to join BRICS. Indonesian Foreign Minister Sugiono highlighted that Indonesia's participation aligns with BRICS' priorities, particularly in food and energy security, which correspond to the policy agenda of President-elect Prabowo Subianto. Furthermore, Indonesia seeks to advocate for the collective interests of developing nations-often referred to as the Global South-through BRICS while simultaneously maintaining strong partnerships with developed countries.²⁶

Fitriani, a senior analyst at the Australian Strategic Policy Institute, emphasized that Indonesia's accession to BRICS does not constitute a strategic shift but rather a continuation of its multi-aligned foreign policy. However, Indonesia must carefully manage BRICS' internal dynamics while preserving its relations with Western nations. This approach serves as a diplomatic leverage point in its

²⁴ Article 4, the Law of the Republic Indonesia Number 37 year 1999, concerns international relations.

²⁵ André C Jordaan, *Op. Cit.*

²⁶ <https://www.bbc.com/indonesia/articles/c4gpp3ke280o>

engagements with the West and aligns with President Prabowo Subianto's principle of being a "friend to all, enemy to none."²⁷

Prospects and Challenges of BRICS Economic Integration

In an era characterized by a substantial transformation in global economic governance, the rise of BRICS signifies a pivotal shift toward multilateralism, providing a renewed framework for economic integration and cooperation among emerging economies. With its rapid economic expansion and growing geopolitical influence, BRICS presents a valuable case study for analyzing the potential benefits and challenges of advancing economic integration.

According to 2023 data from UNCTAD, BRICS collectively contributed to more than 25% of the global economic output while encompassing 42% of the world's population. Consequently, economists project that BRICS' economic growth may surpass that of the Group of Seven (G7) by 2025. Key factors driving this projection include the bloc's substantial population size, vast natural resource endowments, and accelerated economic reforms undertaken by its member states.²⁸

The economic diversity among BRICS member states, including variations in inflation rates, GDP growth trajectories, and fiscal policies, remains unsynchronized across the bloc. Furthermore, significant economic heterogeneity and the presence of distinct economic models—ranging from resource-dependent economies to global manufacturing hubs—present additional challenges, complicating efforts to achieve policy harmonization.²⁹ From a legal perspective, BRICS faces the challenge of transforming economic realities into a stronger normative and ideological framework among its members. While they uphold a neo-Westphalian commitment to state sovereignty and non-intervention, they also advocate for a rules-based, stable, and predictable global order that acknowledges the diversity of political systems and varying stages of development.³⁰

Benefit BRICS for Indonesia

On January 6, 2025, Indonesia formally acceded to BRICS as a full member, thereby integrating into an informal economic and political alliance. Prior to this, Indonesia had been a member of MIKTA (Mexico, Indonesia, South Korea, Turkey, and Australia), a coalition of middle-power states within the G20 framework. MIKTA serves as a cross-regional consultative platform aimed at fostering mutual understanding, strengthening bilateral relations, and facilitating cooperative initiatives.

Indonesia's accession to BRICS aligns with its constitutionally mandated *Free and Active Foreign Policy* (*Politik Luar Negeri Bebas dan Aktif*), a principle first articulated by Mohammad Hatta in his speech "*Rowing Between Two Reefs*." This doctrine was conceived during the Cold War as a strategic stance of non-alignment, allowing Indonesia to assert its sovereignty while avoiding entanglement in the ideological conflicts between capitalist and socialist blocs.

According to data from the Central Statistics Agency (BPS), Indonesia's exports to BRICS countries amounted to US\$84.37 billion in 2024. The breakdown includes: (1) China at US\$60.22 billion (24.20% of Indonesia's total non-oil and gas exports), (2) India at US\$20.32 billion (8.17%), (3) Brazil at US\$1.72 billion (0.69%), (4) Russia at US\$1.31 billion (0.53%), and (5) South Africa at US\$0.78 billion (0.31%).

²⁷ <https://www.aspistrategist.org.au/joining-brics-indonesia-sticks-with-multi-alignment-strategy/>

²⁸ Marida Nach and Ronney Ncwadi, *BRICS Economic Integration: Prospects and Challenges*, South African Journal of International Affairs, 31.2, 2024, p. 151–66.

²⁹ *Ibid.*

³⁰ Thakur Ramesh, *How Representative Are BRICS?*, Third World Quarterly, 35.10, 2014, p. 1791–1808.

China still dominates as the export destination country, with the primary commodities being mineral fuels, nickel, steel, and iron. The author sees that the significant exports to China and India are still in the form of mining products, and this is because geographical factors support it; progress in Indonesia's membership should increase the results of the manufacturing industry and also agricultural commodities, considering the limited natural resources and the existence of environmental damage factors. In the global arena, Indonesia has a strategic position. As the owner of natural resources and the potential of a large population, it is an added value because it can be a market. Participation in the BRICS alliance should not reduce Indonesia's bargaining position with other countries in the power of Russian and Chinese dominance. BRICS has a significant influence on capitalist internal dynamics. The strength of BRICS is the backbone of the transformation of the global economic system, which used to be very dependent on US hegemony; now, with the emergence of free trade globalization, this has become the root of the hegemony that is no longer relevant.

The main objective of Indonesia's joining the BRICS alliance in economic activities is to manifest the Indonesian constitution, particularly to advance public welfare. Such an objective can be used to gain wider market access for Indonesian products, increase foreign investment entering Indonesia, and diversify Indonesia's trading partners in facing the challenges of free Trade in world economic relations.

The Future of BRICS

The literature offers two opposing views on the existence of BRICS. The first perspective asserts that BRICS will emerge as a major economic power, whereas the second view considers it merely a symbolic alliance with limited influence.³¹ As the introduction explains, globalization and hegemony over liberalization in Western countries are under pressure. The existence of BRICS is considered an alternative to the global world order. The question is, what is the future of BRICS? The biggest challenge for BRICS to become a global economic integration is the difference in each country's economic background. Some factors, such as the competition between China, Russia, and India to become regional leaders, are inevitable.³²

The fundamental challenge within BRICS lies in the structural disparity between China and the other member states. China's economy surpasses the combined economies of the remaining BRICS nations, making the notion of a unified BRICS initiative somewhat unrealistic. As a result, BRICS' impact on the global order remains uncertain at best and problematic at worst.³³ Relations between BRICS member countries seem more realistic if they are carried out through bilateral agreements rather than at a broader level of integration.³⁴

Is BRICS a Rational Choice for Indonesia?

Cyrus Janssen, an international relations expert, stated that Indonesia is the fourth most populated country globally and ranks 10th in the global economy. Other potentials owned by Indonesia are Geographical advantages, particularly in the streets of Malacca, to control shipping lines. BRICS represents over half of the world population, 35% of world GDP in purchasing power parity, and half of world agricultural and natural gas production.³⁵

³¹André C Jordaan, *BRICS—Quo Vadis?*, Development Southern Africa, 38.3, 2021, p. 454–68.

³²*Ibid.*

³³Harsh V Pant, *The BRICS Fallacy*, The Washington Quarterly, 36.3, 2013, p. 91–105.

³⁴Zaki Laidi, *The BRICS against the West?*, Centre d'études et de Recherches Internationales (CERI-Sciences Po/CNRS), CERI Strategy Paper, 11, 2011.

³⁵ <https://youtu.be/GRPHoo4tOp8?si=ePTht-IYtDI5UHye>

Is joining the BRICS alliance a rational choice for Indonesia? To answer the question, the authors try to use an international trade law approach linked to the objectives of Indonesian foreign Trade as regulated in Article 3 of the Indonesian international trade law, including increasing competitiveness of export products, the capability of exporters and importers, and expanding market access.

1) Expanding market access

According to data from the Central Statistics Agency (BPS), Indonesia's exports to BRICS countries-Brazil, Russia, India, China, and South Africa, totaled USD 84.37 billion throughout 2024. Meanwhile, Indonesian export figures to BRICS nations for the 2022-2023 period are presented in the following table:

No	Countries	Trade Value (USD) in 2022	Trade Value (USD) in 2023
1	China	65.839.305.417	64.934.582.004
2	Russia	1.381.635.521	912.925.526
3	India	23.365.756.396	20.289.263.824
4	Brazil	1.487.292.130	1.277.469.547
5	Saudi Arabia	2.018.560.333	2.078.715.417
6	United Arab Emirates	2.297.101.263	2.648.681.384
7	Iran	241.718.739	194.459.846
8	South Africa	1.090.307.473	843.105.998
9	Egypt	1.335.127.214	1.312.346.584
10	Ethiopia	47.478.832	41.363.514 ³⁶

Due to the expansion of 5 new members of BRICS (Saudi Arabia, UAE, Iran, Egypt, and Ethiopia), it does not guarantee an increasing Indonesia's market access. Indonesia's exports to these countries are low, except for Saudi Arabia and the UAE. Will Indonesia's participation in BRICS guarantee increased exports to each country? The author assumes that the market access obtained by Indonesia to China, India, Brazil, UAE, and Iran manifests the commitment of each country that has entered into PTAs with Indonesia. Moreover, differences in economic and investment patterns, economic policies, population size, and labor force have created disparities among BRICS members. These disparities present challenges for Indonesia, particularly in competing within the framework of free movement of goods and services.

Regarding economic growth through expanding market access, focusing on trade diversification and specialization activities could drive Indonesia to promote economic growth and development. Trade diversification, particularly in developing regions, can be advanced by redirecting trade policies from a reliance on export concentration toward a more diversified export strategy. Expanding the range of exported goods and markets not only mitigates export volatility but also facilitates the transition from dependence on primary commodities to a more industrialized economy. Additionally, export diversification fosters the adoption of new

³⁶BPS-Statistic Indonesia, *Indonesia Foreign Trade Statistic Export 2023 (Book1)*, Volume 19, 2024, p.35-40

production technologies and enhances managerial efficiency by exposing domestic industries to international competition, ultimately strengthening their global competitiveness.³⁷

The author's analysis states that if Indonesia's main goal in joining BRICS is to expand market access, it seems unrealistic, considering that the BRICS forum is not an international trade organization or PTA based on the reciprocal principle. The commitment of BRICS member countries to ensure the creation of fair trade relations has not been manifested as a binding commitment. Therefore, the author states that if Indonesia wants to realize its foreign trade policy goals by expanding market access, it will be more realistic to maximize existing PTAs with BRICS member countries.

So far, Indonesia has 5 PTAs with BRICS member countries, and 2 PTAs are being negotiated with Russia and Saudi Arabia.

No	Country	PTA and its Coverage
1	China	ACFTA and RCEP
2	Russia	I-EAEU FTA (ongoing negotiation)
3	India	AIFTA
4	Brazil	IM-CEPA
5	Saudi Arabia	I-GCC FTA (ongoing negotiation)
6	United Arab Emirates	IUAEC-CEPA
7	Iran	II-PTA

2) Increasing the capability of exporters and importers

A country enhances its domestic and external capabilities through policies supporting its anthem. Developed countries usually make these efforts, and importers from developing countries increase their economic growth

in several ways. Developed countries assist developing countries. Within the framework of the WTO, this multilateral organization provides a series of assistance for trade capacity for developing countries, usually in the form of technical assistance such as building more efficient ports, which is the goal of one of the WTO agreements, namely the Trade Facilitation Agreement. This assistance can also be done in collaboration with other international organizations, such as the World Customs Organization (WCO), to provide customs officials with automated equipment and even in the form of assistance to exporters and importers.³⁸

Building trade capacity is a crucial component of international trade, particularly for developing countries that often face structural challenges such as a lack of skilled human resources, weak institutional frameworks, and inadequate infrastructure to support trade activities. Trade capacity-building initiatives aim to enhance a country's ability to engage effectively in global trade by improving regulatory frameworks, streamlining customs procedures, and fostering innovation and competitiveness among domestic industries.

In the context of BRICS, trade capacity-building efforts face additional complexities due to the economic disparities among its member states. While China and Russia have more advanced industrial and technological capabilities, other members, such as South Africa and

³⁷Sinesipho Siswana and Andrew Phiri, *Is Export Diversification or Export Specialization Responsible for Economic Growth in BRICS Countries?*, *The International Trade Journal*, 35.3, 2021, pp. 243–61.

³⁸ https://www.wto.org/english/tratop_e/devel_e/build_tr_capa_e.html.

newer entrants like Ethiopia, may struggle with limited resources to fully participate in global trade. Addressing these gaps requires coordinated efforts, including knowledge-sharing, technology transfers, and investment in trade-related infrastructure.

For BRICS to strengthen its role as an influential economic bloc, it must establish structured mechanisms for trade facilitation, such as technical assistance programs, skill development initiatives, and financial support for infrastructure projects. Multilateral cooperation within BRICS, along with partnerships with international organizations like the World Trade Organization (WTO) and the United Nations Conference on Trade and Development (UNCTAD), could help bridge capacity gaps and ensure more inclusive trade participation.

Furthermore, trade capacity-building should not be limited to government initiatives; the private sector must also be involved in fostering a competitive business environment. By promoting innovation, digital trade solutions, and access to finance for small and medium enterprises (SMEs), BRICS can create a more resilient and sustainable trade ecosystem that benefits all member countries, particularly the developing ones.

In the context of BRICS, considering that its member countries are developing countries, assistance for trade capacity is difficult to realize. Which countries should play an active role in the program? Are China and Russia known to have capabilities comparable to those of the rest of the members?

As explained in the previous chapter, BRICS is an alliance that aims to accelerate the economic growth of its member countries. Several avenues can be utilized in the BRICS scheme to increase capacity building; for example, the BRICS Business Council functions as a platform for business actors to promote international Trade and investment. So far, only China has the initiative to support the capacity-building program. The Industrial Development Cooperation (IDC) and the Bank of China (BoC) have expressed their willingness to provide R10 billion in financial support for projects in the energy, mining, manufacturing, agriculture, and infrastructure sectors.

3) Increasing competitiveness of export product

The Indonesian government's efforts to increase the competitiveness of export products include market diversification, which involves expanding export markets to non-traditional countries. Export market diversification is a strategy a country employs to broaden its trade reach by identifying and engaging with new partner countries that have yet to establish bilateral, regional, or multilateral trade agreements. This approach is critical in reducing dependence on traditional markets, mitigating economic risks associated with global trade fluctuations, and enhancing the resilience of Indonesia's export sector.

Market diversification is also a key component of the Ministry of Trade's strategic plan, as outlined in the 2020–2024 National Medium-Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional* or RPJMN).³⁹ The RPJMN emphasizes the need to explore new markets across Africa, the Middle East, Latin America, and Central Asia, which present substantial trade opportunities due to their growing demand for diverse goods and services. By expanding into these regions, Indonesia aims to tap into emerging economies and

³⁹Hotsawadi Hotsawadi and Imelda Veronica Gea, 'Measuring the Competitiveness and Efficiency of Indonesian Non-Oil and Gas Exports to Non-Traditional Markets', *Jurnal Hubungan Luar Negeri*, 9.2 (2024), pp. 239–59.

lessen its reliance on established trading partners such as China, the United States, and the European Union.

To support this initiative, the Indonesian government has undertaken various measures, including trade missions, business matchmaking events, participation in international trade expos, and the negotiation of preferential trade agreements with non-traditional markets. Additionally, Indonesia has been strengthening its economic diplomacy efforts through embassies and trade representatives to foster new partnerships and facilitate smoother market entry for domestic exporters.

Furthermore, the government provides incentives for exporters to explore new markets, such as export financing schemes, tax breaks, and regulatory support to streamline the export process. By continuously adapting to global trade dynamics and embracing market diversification strategies, Indonesia seeks to enhance its global trade position, ensuring long-term economic sustainability and greater export competitiveness in the evolving international market landscape.

Based on data released by BPS, Indonesia's central export destination countries are China, the United States, Japan, India, and Singapore. Exports to these countries reached 54.82% of total exports. The agricultural sector (such as coffee, birds nest, and other annual plants), manufacturing sector (such as palm oil, non-ferrous base metal, and iron/steel), and mining sector (such as coal, copper ore, and lignite) are still Indonesia's leading export products. Meanwhile, Indonesia's total non-oil and gas exports were worth 201.25 billion US dollars, down 12.74 percent compared to the same period in 2022. The Indonesian export profile as mentioned above indicates that the diversification of Indonesia's export market is still not optimal. Business actors are expected to be able to increase their productivity and export performance by producing more value-added products.

IV. CONCLUSION

Understanding the BRICS phenomenon from a legal perspective is quite important. BRICS is not classified as an international organization; instead, it operates as a Global South networking alliance or an advanced framework for institutional international cooperation. Because of its current status, BRICS likely has no legal personality in its functions. Legal personality is an essential attribute for an international organization to be able to carry out its functions, such as making contracts, making agreements with other countries, or filing claims with other legal entities. From the perspective of international trade law, BRICS is also not a Preferential Trade Agreement formed based on the provisions of Article XXIV GATT, Enabling Clause, Article V GATS, and the General System of Preferences.

The implications of Indonesia's membership in BRICS toward its foreign trade policy can be seen in political and legal motives or reasons. The political reason is that Indonesia is a non-aligned country with common interests with BRICS member countries, which are developing countries. The legal reasons for this can be seen in Indonesia's foreign trade policy, namely the increasing competitiveness of export products, the capability of exporters and importers, and the expansion of market access.

The author considers that political reasons are a rational choice used by Indonesia to join BRICS, but not for legal reasons. Suppose Indonesia wants to accelerate the realization of its foreign trade policy. In that case, BRICS is not a realistic choice, considering that the BRICS is not an international trade organization where member countries can implement their commitments based on the principle of reciprocity. However, we do not yet know what the future of BRICS will be like or whether this

alliance will increase its status to implement its commitments. Regarding international Trade, the authors recommend that the Indonesian government pay more attention to utilizing existing PTAs with trading partner countries. This is considered more realistic as an effort to realize foreign trade policy

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